ML STRATEGIES

DECEMBER PREVIEW

The culmination of the year's legislative activity all comes down to the month of December – so buckle up. Congress will need to pass a government spending bill by December 8th, and this bill is expected to carry a significant laundry list of items. That is why it is widely assumed that, in the next ten days, Congress will pass a two-week continuing resolution (CR) – through December 22nd – to provide time for both sides to finalize agreements on the laundry list. This also gives the Senate a little breathing room to make a run at passing a tax reform package.

It's possible that a two-week CR could carry certain proposed legislation with it, but expect the Democrats to keep all outstanding items in one vehicle outside of the short-term CR for the sake of securing the best deal possible. By now, we are all well aware of the remaining health care items that are still hanging out there keeping us up at night. As it relates to the minibus, we are trending in the direction of a bipartisan, bicameral agreement on the Medicare extenders.

The Health Care Minibus, which includes the Children's Health Insurance Program (CHIP), the Maternal, Infant, and Early Childhood Home Visiting Program (MIECHV), the Community Health Center Fund, and disproportionate share hospital (DSH) reductions, all still need to be reauthorized after their funding lapsed in October. Also included in the minibus are the Medicare outpatient therapy cap exception process, which expires December 31, and Medicare Advantage special needs plans (SNPs).

CHIP is the driver of the minibus. It's been 58 days since Congress let CHIP's funding expire. After the intensity of advocacy while Congress was considering the repeal and replacement of the Affordable Care Act, it shouldn't be too surprising that there is not as much intense pressure on getting CHIP done as one would think, even given how close we are to some states exhausting their resources. Still, Congress will act before the current funding lapse has real consequence. They won't leave for the holidays without passing some form of an extension. Beyond CHIP, here's where things currently stand:

HEALTH CARE

The House passed the Energy & Commerce measure, The Championing Healthy Kids Act, included a five-year extension of the Children's Health Insurance Program (CHIP), a two-year extension of Community Health Center Fund, which includes the National Health Service Corps and the Teaching Health Center Graduate Medical Education programs, and eliminates the FY2018-2019 Medicaid DSH reductions. The bill also included two-year extensions to the family-to-family health information centers, the youth empowerment program, and the personal responsibility education program (PREP).

The Ways & Means Committee recently announced it agreed to a Medicare extenders package, which would repeal the Medicare therapy caps and provide for a permanent extension of the exceptions process. It also included a five-year reauthorization of special needs plans and the home health rural add-on. The bill also included two-year extensions of the following programs: the Medicare Dependent Hospital Program, the Low-Volume Adjustment Program, the Medicare geographic payment cost index for physician payments, the State Health Insurance Assistance Programs, and the consensus-based entity work on quality measures.

The Senate Finance Committee put forth a discussion draft which included a number provisions outlined above. The Finance bill included permanent repeal of therapy caps, a two-year extension of the MIECHV program, and two-year extensions of funding for quality measure endorsement, input, and selection, funding outreach and assistance for low-income programs, abstinence education, PREP, family-to-family health information centers, and the health workforce demonstration project. The Finance bill also includes five year extensions to the ambulance add-on payments, the low-volume hospital payments, Medicare-dependent hospital program, and the home health rural add-on.

The bottom line is this: With each committee having reached bipartisan agreements, the health care pieces should come together; it's just a matter of timing. We wait and see if the House and Senate negotiators can reach an agreement on payfors, but if they can't, expect leadership to come in and make that decision.

There are many outcomes with this scenario. Stakeholders prefer longer-term extensions or permanent policies (therapy caps) over shorter-term extensions. However, there is an argument to be made that having regular policy vehicles available that drives policy development. Many policies became law attached to SGR fixes over a decade and a half. One way or the other, this should get done. It's highly unlikely they leave town doing nothing.

TAXES

There is mounting pressure to get a tax reform deal done – but is December 22nd a realistic timeframe? There's no question Congressional Republicans will try, and getting a bill through the Senate this week is absolutely necessary if they are to succeed. The individual mandate is front and center for many health care stakeholders. The repeal of the mandate would cause serious disruption to the individual market and increase the number of uninsured by 13 million over the next 10 years, according to the Congressional Budget Office. The White House has indicated they are willing to take it out if it becomes problematic for passage of the overall bill, a clear signal that tax reform is more important than any thoughts that they might be 'killing two birds with one stone.' Here are some other provisions to keep on your radar:

Medical Expense Deduction: The House-passed bill eliminated the medical expense deduction but the Senate keeps it in place. The medical expense deduction is a benefit available to taxpayers whose medical care expenses are above 10 percent of their adjusted gross income. Eliminating the deduction would increase taxes for those who use the deduction to pay for high-cost medical needs and those in institutions who often have complex needs.

State and local tax deduction: The state and local tax deduction allows for taxpayers to reduce their federal tax liability by their state and local property taxes paid. Both the House and Senate bills eliminate this deduction, which could force states to cut their tax revenues, which could affect Medicaid and other state-based programs.

The bottom line is this: The pressure to get something that can be labeled 'tax reform' is incredibly intense for Congressional Republicans. It is the last opportunity to accomplish notable policy in the first year of the Trump presidency. But sticking points remain on the bill's increase to the federal deficit and treatment of small businesses. Is there a 'skinny' version that emerges in the next few weeks that allows them to claim victory? That outcome may take health care-related provisions off the table.

ALEXANDER-MURRAY

The longer the individual mandate stays in play, the longer Alexander-Murray remains in play. While there are no signs Alexander-Murray can move on its own, it could find its way to the table. The Democrats are unlikely to support the measure if it is somehow tied to the individual mandate in a tax reform vote. However, the Alexander-Murray package shows that both sides can work together in health care reform. Moreover, Senators Alexander and Murray seem committed to shoring up the ACA markets, and there is much more work to be done, especially if the individual mandate is repealed or neutered through regulation.

EVERYTHING ELSE

With any large package comes the riders. Senator Hatch, Chairman of the Finance Committee, will likely pursue inclusion of the CHRONIC CARE Act of 2017 in any end of year deal. It has bipartisan support and is the result of years of bipartisan work in the Finance Committee. It passed the Senate back in September. The bill includes a number of provisions designed to improve health outcomes for Medicare beneficiaries with chronic conditions, including a permanent authorization of SNPs. The House has passed aspects of the deal, but did not consider the package as a whole.

There's also aspects of the Medicare Outpatient Prospective Payment (OPPS) rule as it relates to the 340B program which will likely be addressed. Earlier this month, CMS finalized the OPPS rule, which formalized a proposal to cut payments for physician-administered drugs by more than 28 percent, which will result in a $1.6 billion cut for hospitals. The cuts will take effect January 1st absent any action. Rep. David McKinley (R-WV-1) and 17 bipartisan cosponsors (and counting) introduced legislation which would place a moratorium on the $1.6 billion cut in 340B payments, effectively halting the proposed rule as it relates to the 340B program. Stakeholders are agitating to get this stopped and will be rallying support to achieve that.

Moving beyond healthcare, here are the remaining items that will suck up a lot of energy as Congress works to finalize a government funding bill.

The fate of roughly 800,000 young immigrants hangs in the balance after the Deferred Action for Childhood Arrivals (DACA) program was rescinded by the Trump Administration in September. Because Congress has until March to resolve the nixing of the program, Speaker Ryan contends that it is not necessary to address it in an end of year deal. Certain Democrats, on the other hand, appear to be insistent on a DACA fix being included in an end of year deal. There are Republicans and Democrats on both sides who would like to get it done now, and the question becomes how many withhold their vote in the absence of any action on DACA. Another obstacle surrounding the DACA issue is Trump's promised border wall along the U.S.-Mexico border. The Administration is requesting $1.6 billion for the border wall, and many Democrats insist they will not vote for any package that includes funding for the border wall. **This has the potential to derail any government spending bill.**

Congress will also have to finalize appropriations for the Department of Defense. The National Defense Authorization Act (NDAA) awaits the President's signature, and would authorize $700 billion in defense spending, including $626.4 billion for base spending. Still, there remain pressure points between defense hawks who call for increased defense spending and deficit hawks, who would like to cut spending. The AP reports that talks on spending caps are currently stalled. A GOP proposal would have increased the Pentagon budget by more than $54 billion next year and nondefense limits by $37 billion. The Democrats rejected the proposal insisting that there be balance on the increases.

Since the Trump Administration declared the opioid epidemic a public health emergency, there has been no formal request for funding. It's possible the White House is looking to Congress to put forth a request, but its fate is anyone's guess even in a must-pass government-spending bill.

The White House recently asked Congress to approve an additional $44 billion for the ongoing hurricane relief efforts. Both sides have indicated that figure is low so expect appropriators to look for offsets to build upon that request. In the fight for payfors, this may turn into an ugly battle.

Lastly, there's gun control. There has been a slow burn around a bipartisan effort to improve the National Instant Criminal Background Check System (NICS). Legislation introduced by Senators John Cornyn (R-TX) and Chris Murphy (D-CT) would penalize federal agencies who fail to properly report relevant criminal records and directs more federal funding to accurate reporting of domestic violence records. There will likely be other legislation introduced, such as a ban on bump stocks, but it remains to be seen whether these issues are addressed in a year-end deal.